

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

TODDCO, INC. and TODD SANDERS )  
in his official capacity as )  
President of Toddco, Inc. and )  
as an individual, )  
 )  
Plaintiffs, )  
 )  
vs. ) NO. 2:04-CV-03  
 )  
NEXTEL WEST CORP. d/b/a )  
NEXTEL COMMUNICATIONS and )  
CINGULAR WIRELESS, LLC, )  
 )  
Defendants. )  
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NEXTEL WEST CORP. d/b/a NEXTEL )  
COMMUNICATIONS, )  
 )  
Cross-Claimant, )  
 )  
vs. )  
 )  
CINGULAR WIRELESS, LLC, )  
 )  
Cross-Defendant. )

**OPINION AND ORDER**

This matter is before the Court on the Motion to Dismiss, filed by Plaintiffs, Toddco, Inc. and Todd Sanders, on September 8, 2006. For the reasons set forth below, the Motion is **GRANTED**. The Clerk is **ORDERED to DISMISS** Plaintiff's complaint **WITH PREJUDICE**, each party to bear its own costs and attorney's fees. The Court notes

that Nextel West Corporation, d/b/a Nextel Communications ("Nextel") cross-claim against Cingular Wireless, LLC, **REMAINS PENDING.**

Federal Rule of Civil Procedure 41(a)(1)(i) provides in relevant part: "[A]n action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs." In this case, no answer or motion for summary judgment was filed by Defendant, Cingular Wireless, LLC.<sup>1</sup> Consequently, the Court **GRANTS** Plaintiff's Motion to Dismiss.

DATED: September 11, 2006

/s/RUDY LOZANO, Judge  
United States District Court

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<sup>1</sup>In an order dated April 25, 2006, this Court granted Plaintiffs' motion for partial dismissal, dismissing Plaintiffs' claims against Nextel with prejudice. The Court noted that Plaintiffs' claims against Cingular Wireless, LLC, and Nextel's cross-claim against Cingular Wireless, LLC, remained pending.